IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 851/2003 M/S

Javed Iqbal …… Petitioner

Versus

Addl. District Judge, Haridwar and others ……Respondents

Hon'ble Irshad Hussain, J.

Heard Sri Lok Pal Singh learned counsel for the petitioner, Sri Alok Singh learned counsel for the respondent no.3 and Sri J.P.Joshi learned Standing Counsel for the respondent nos. 1 to 3 & 8 to 11.

By means of this writ petition, the petitioner has prayed for issue a writ, order or direction in the nature of certiorari to quash the impugned order dated 28.8.2003 (Annexure-9) passed by the learned Addl. District Judge, Haridwar and order dated 6.2.2001 (Annexure-8) passed by the prescribed authority.

It was mainly alleged by the petitioner that although number of casted votes were 1,111 the number of counted votes were 1,124 and that this has materially affected the result of the election. The learned prescribed authority without verifying this peculiar aspect of the case passed the impugned order dated 6.2.2001 on the premise that the directions of the department of the Panchyati Raj does not permit the summoning of the record. Any departmental direction cannot override the statutory provision or rules, therefore, the decision of the prescribed authority not to verify the aspect or infirmity after summoning of the record cannot legally be sustained. The learned revisional court while dismissing the revision per judgment and order dated 28.8.2003 also did not take into account this aspect of the matter. Therefore, both the impugned orders dated 28.8.2003 and 6.2.2001 cannot be legally maintained.

In view of above, both the impugned orders dated 28.8.2003 and 6.2.2001 are set aside.

With the consent of the learned counsel for the parties, it is ordered that the learned prescribed authority after summoning the record shall verify the total number of votes casted and the total number of votes counted in the

election petition. Before taking up the exercise, the learned prescribed authority shall also pass appropriate order on application for amendment to add some relief in the petition.

Considering the urgency of the matter, it is further directed that the learned prescribed authority after summoning the record shall verify the above fact within two weeks from the date of receipt of the copy of this order and shall thereafter proceed to decide the election petition on merit according to law.

With these directions, the petition is finally disposed of.

Dated 15.3.2004 **(Irshad Hussain, J.)**

Rawat